

March 31, 2016

CELA

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***Via US Mail:***

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn.: Donna Rawls, Paralegal  
999 E Street, NW  
Washington, DC 20436

and

***Via Electronic Mail:***

[drawls@fec.gov](mailto:drawls@fec.gov)  
[jjordan@fec.gov](mailto:jjordan@fec.gov)

Re: *MUR 7022 - Complaint Against Flores for Congress and Norberto J. Cisneros in  
My Capacity as Treasurer*

Dear Mr. Jordan:

Please accept this letter, as Flores for Congress' and my official response to the complaint filed by David Chase, Campaign Manager for Ruben Kihuen for Congress, and received by Flores for Congress on March 17, 2016. I am included in the complaint because I serve as Flores for Congress' Treasurer. The complaint is based upon a video ad for Bernie 2016. The ad can be found at [https://www.youtube.com/watch?v=B6G4T\\_3vDew](https://www.youtube.com/watch?v=B6G4T_3vDew), as cited in Mr. Chase's complaint. The video contains all of the information needed by this Commission to dismiss the complaint.

Mr. Chase's perfunctory complaint argues the Bernie 2016 video ad is a "coordinated communication" and thus should be considered an in-kind contribution from Sanders 2016 to Flores for Congress. Mr. Chase acknowledges that in order for the ad to be considered a "coordinated communication," the ad must meet the three-prong test set forth in the Commission's regulation at 11 C.F.R. §109.21. Mr. Chase also admits that all three prongs of the test – payment, content and conduct prongs – must be met. Mr. Chase then cites to only one section to support his argument that the content prong has been violated. Mr. Chase states, "[t]he

Mr. Jeff Jordan  
March 31, 2016  
Page 3 of 3

ad meets the Commission's content prong since the ad is the 'functional equivalent of express advocacy,' 11 C.F.R. §109.21(b)(5)<sup>1</sup> (*sic*).<sup>2</sup> What Mr. Chase fails to tell the Commission is that 11 C.F.R. §109.21(c)(3) only applies if:

[t]he public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction *90 days or fewer* before the clearly identified candidate's general, special, or runoff election, or primary or preference election, or nominating convention or caucus.<sup>3</sup>

Looking at the link provided by Mr. Chase<sup>3</sup>, the video was "[p]ublished on Feb. 12, 2016." It is undisputed that Nevada will hold its primary elections on June 14, 2016. The ad thus was publicly distributed *123 days before* Ms. Flores' upcoming election, well outside 11 C.F.R. §109.21(c)(3)'s 90-day window. By the clear and unambiguous language of the regulation, the ad did not and could not violate 11 C.F.R. §109.21(c)(3). For this reason alone, Mr. Chase's complaint should be dismissed. It is the only basis he provides for any alleged content prong violation.

Even assuming the ad did run within 90 days of Ms. Flores' election, the ad did not violate 11 C.F.R. §109.21(c)(3). In order for a violation of 11 C.F.R. §109.21(c)(3) to occur, the public communication must expressly advocate the election or defeat of a clearly identified candidate for Federal office. The term "expressly advocating" is defined in 11 C.F.R. 100.22 as a communication that "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate." 11 C.F.R. §100.22 also lists specific examples of communication that "expressly advocates." The video ad is the best evidence to show it contains nothing close to "expressly advocating" for Flores for Congress. The video ad never mentions Ms. Flores' candidacy or advocates for the defeat of her opponent. The ad unquestionably endorses Bernie Sanders for president and never provides a single word spoken or written that identifies Ms. Flores as a candidate, including anything close to the examples provided in 11 C.F.R. §100.22. Thus, for this reason also, Mr. Chase's argument fails to support a coordinated communication violation.

Finally, Mr. Chase provides no support as to why the "safe harbor" provision found in 11

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<sup>1</sup> Mr. Chase incorrectly cites to 11 C.F.R. §109.21(b)(5). It is believed he meant to cite to 11 C.F.R. §109.21(c)(3).

<sup>2</sup> See 11 C.F.R. §109.21(c)(4)(i). (*Emphasis added*).

<sup>3</sup> [https://www.youtube.com/watch?v=B6G4T\\_3vDew](https://www.youtube.com/watch?v=B6G4T_3vDew), underneath the video ad on the first page.

Mr. Jeff Jordan  
March 31, 2016  
Page 3 of 3

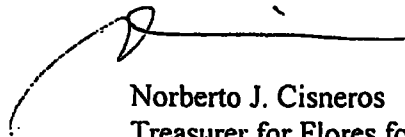
C.F.R. §109.21(g)(1) does not apply. 11 C.F.R. §109.21(g) states:

(g) Safe harbor for endorsements and solicitations by Federal candidates. (1) A public communication in which a candidate for Federal office endorses another candidate for Federal or non-Federal office is not a coordinated communication with respect to the endorsing Federal candidate unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate.

As described above and can be seen in the video ad, the content does not include any language promoting or supporting Ms. Flores' candidacy for federal office, and does not attack or oppose her opponents. The video ad makes no mention at all of her candidacy.

For the reasons set forth above, Mr. Chase's complaint should be dismissed and the Commission's resources should be utilized on other meritorious cases.

Sincerely,



Norberto J. Cisneros  
Treasurer for Flores for Congress